

McGuireWoods LLP
1345 Avenue of the Americas
Seventh Floor
New York, NY 10105-0106
Phone: 212.548.2100
Fax: 212.548.2150
www.mcguirewoods.com

Philip A. Goldstein
Direct: 212.548.2167

McGUIREWOODS

pagoldstein@mcguirewoods.com
Direct Fax: 212.715.6275

November 17, 2011

Via ECF and Federal Express

Hon. Leonard D. Wexler
United States District Judge
United States District Court
Eastern District of New York
944 Federal Plaza, Courtroom 940
Central Islip, New York 11722

**Re: *Coniglio v. Capital One, N.A.*
Case No. 10 CIV 5353 (LDW)(WDW)**

Dear Judge Wexler,

We are counsel for Defendant Capital One, N.A. ("Defendant" or "Capital One"), and write in response to the letter filed by Steven J. Moser earlier today in which he requested an extension of time to file an amended complaint. As Your Honor recognized at the status conference on November 3, 2011, this case has been pending for one year. Indeed, Mr. Moser filed the operative complaint on November 18, 2010. On January 21, 2011, Defendants timely filed and served a pre-motion letter seeking to dismiss the complaint. However, Plaintiff's counsel failed to respond to Defendants' pre-motion letter.

At that November 3rd status conference, Your Honor asked for the status of the case. I informed the Court that we had been attempting to contact Mr. Moser since Defendant filed its pre-motion letter but Mr. Moser failed to respond to our repeated telephone calls and e-mails. Your Honor then stated that discovery needed to be completed within six months and referred the parties to Magistrate Judge Wall to set a discovery schedule. In addition, based on Mr. Moser's representation at the conference, Your Honor stated that Plaintiff's deadline to file an Amended Complaint was November 17, 2011. Your Honor also set the below dates concerning Defendants' Motion to Dismiss or Strike:

- Defendant's Motion to Dismiss or Strike Plaintiff's operative Complaint to be served by December 16, 2011
- Plaintiff's Opposition, if any, to be served by 21 days after service of Defendant's Motion to Dismiss or Strike Plaintiff's operative Complaint (by January 6, 2012 if the motion is served on December 16, 2011)

Hon. Leonard D. Wexler

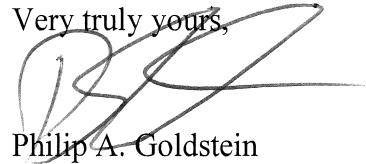
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- Defendant's Reply, if any, to be served by 10 days after service of Plaintiff's Opposition (by January 17, 2012 if the opposition is served on January 6, 2012)

As set forth above, the parties are operating on an extremely short discovery schedule especially given that this matter is a putative class and collective action and will require significant discovery. Counsel for Plaintiff has repeatedly failed to meet deadlines set by the Court and Your Honor's Individual Practices. Indeed, counsel for Plaintiff has had *one year* to amend his complaint yet has failed to do so. However, counsel for Plaintiff once again seeks to delay this matter and further impede Defendant's ability to conduct discovery. Therefore, Defendant requests that Plaintiff's request to extend the deadline to file an amended complaint be denied and that the above schedule concerning Defendant's proposed motion to dismiss or strike be So Ordered.

Very truly yours,

A handwritten signature in black ink, appearing to read 'PAG', is written over the typed name Philip A. Goldstein.

Philip A. Goldstein

PAG/ec

cc: Steven J. Moser (via ECF)

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